

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Kara Hughes	Team: Team # 4	CCRB Case #: 200200987	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Wednesday, 01/30/2002 6:30 AM	Location of Incident: § 87(2)(b)	Precinct: 72	18 Mo. SOL 7/30/2003	EO SOL 7/30/2003	
Date/Time CV Reported Wed, 02/13/2002 3:44 PM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Wed, 02/13/2002 3:44 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. Officers			
2. SGT Joseph Gulotta	01082	900369	072 PCT
3. POM Michael Murray	29837	906901	ESS 07

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Joseph Giustino	21487	906342	072 PCT
2. SSA Thomas Urban	02799	874830	E S U
3. POM Glenn Ostermann	26476	889160	BOMB SQ
4. LT Daniel Murphy	00000	879142	072 PCT

Officer(s)	Allegation	Investigator Recommendation
A.SGT Joseph Gulotta	Abuse: Sgt. Joseph Gulotta entered and searched § 87(2)(b)'s apartment.	
B.POM Michael Murray	Force: PO Michael Murray used physical force against § 87(2)(b).	
C. Officers	Force: Officers used physical force against § 87(2)(b).	
D. Officers	Force: Officers used physical force against § 87(2)(b).	
E.SGT Joseph Gulotta	Abuse: Sgt. Joseph Gulotta damaged § 87(2)(b)'s property.	

Synopsis

On January 30th, 2002, twenty officers from the Emergency Services Unit (“ESU”) and the 72nd precinct arrived at § 87(2)(b)’s Brooklyn apartment based upon a valid search warrant (for narcotics) obtained by Sgt. Joseph Gulotta of the 72nd precinct’s Anti-Crime unit (*allegation a entry*). Officers from ESU’s Apprehension tactical team (“A-Team”), the Bomb Squad and the Canine Unit entered § 87(2)(b)’s residence and were responsible for securing the apartment and handcuffing the five individuals present within. Three allegations of excessive force resulted from officers initial interaction with § 87(2)(b) and her family; it was posited that officers used excessive force against § 87(2)(b), § 87(2)(b) and § 87(2)(b) (*allegations b-d respectively*). § 87(2)(b), § 87(2)(g)

§ 87(2)(b)

§ 87(2)(a) 160.50

Sgt. Gulotta obtained a valid search warrant for § 87(2)(b), § 87(2)(e); § 87(2)(g)

§ 87(2)(b)

During a photo array session, § 87(2)(b) identified PO Michael Murray as the officer that allegedly struck § 87(2)(b) in the face; § 87(2)(g). § 87(2)(b), § 87(2)(g); additionally, § 87(2)(b) was unable to offer an explanation as to how he recognized PO Murray and had previously testified that the officer who struck § 87(2)(b) was wearing a helmet during his activity at the residence. § 87(2)(b) also made no mention of injury when receiving medical attention (for symptoms related to methadone withdrawal) on § 87(2)(b), § 87(2)(g).

§ 87(2)(b)

The injuries sustained by § 87(2)(b) and § 87(2)(b) and the injuries they reported while seeking medical treatment immediately following the event, include bruising, swelling and tenderness. These injuries were reportedly sustained when ESU officers “kicked,” “hit” and “beat on” both § 87(2)(b) and § 87(2)(b). § 87(2)(b), § 87(2)(g)

§ 87(2)(b)

Additionally, the ESU officers who arrived at § 87(2)(b)’s apartment had no independent recollection of their activity at the residence. § 87(2)(g)

§ 87(2)(b)

Sgt. Joseph Gulotta testified to being responsible for searching § 87(2)(b)’s apartment; according to the statements provided by the civilians involved, the apartment was in disarray and a television had been broken as a result of search. § 87(2)(b), § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

Summary of Complaint

§ 87(2)(b) filed this complaint with the CCRB on behalf of her family members who reside at § 87(2)(b) on February 13th, 2002, two weeks after officers appeared at the Brooklyn apartment. § 87(2)(b), § 87(2)(g)

§ 87(2)(b)

On March 6th, 2002, § 87(2)(b) appeared at the CCRB to be interviewed along with § 87(2)(b), § 87(2)(b); § 87(2)(b) and § 87(2)(b) were also interviewed

at this time. § 87(2)(b) stated that at approximately 6:00 AM on January 30th, 2002, he was lying on a couch in the living room of his mother's apartment. His mother, § 87(2)(b) was present in the kitchen and his sister, § 87(2)(b) had just returned home from work and was getting changed in her bedroom. § 87(2)(b) has two cousins that were also present at the location; § 87(2)(b) who is mentally handicapped, was sleeping on a cot in the living room and § 87(2)(b) was sleeping in the bedroom of § 87(2)(b).

"Twenty" officers, in what § 87(2)(b) described as "full riot gear" (*ESU officers*) entered the location; the officers did not break down the door, as it was unlocked. Multiple officers approached § 87(2)(b); he was unable to describe any of the officers as they were wearing helmets with masks covering their faces. § 87(2)(b) stated that he was picked up from the couch and "thrown" to the floor; his right knee struck a metal bar within the couch, causing swelling to his knee (*see photographs, enc. 28e-f*). § 87(2)(b) stated that once he was on the floor, an (*unidentified*) officer placed his foot on his lower back area. As this was occurring, § 87(2)(b) asserted that other officers were "beating up" his cousin § 87(2)(b) (who was also present in the living room at this time). § 87(2)(b) stated that he shouted, "Hey, what are you doing? He's mentally retarded." At this time, an officer allegedly "stomped" on § 87(2)(b)'s lower back area with enough force that bruising occurred. § 87(2)(b) asserted that he was not resistant and placed into handcuffs without incident.

From his position on the floor, § 87(2)(b) observed that officers had entered § 87(2)(b)'s room. § 87(2)(b) asserted that an officer stepped forward and "hit" § 87(2)(b) with a "shield" (*presumably a large plastic shield utilized by ESU*). The force of being struck with the shield knocked § 87(2)(b) to the ground. § 87(2)(b) yelled that the officers should leave his sister alone; an officer allegedly responded by telling § 87(2)(b) to "shut up" before punching him in the left eye. Following the "punch," § 87(2)(b) placed his head back on the floor and said nothing further. A short time later, an unidentified officer asked where a light switch was located, to which § 87(2)(b) responded by attempting to stand up from the floor. Three officers then approached him and "stomped on" § 87(2)(b)'s back and stepped on the back of his head in a manner that caused bruising behind his ear; § 87(2)(b)'s tooth was also chipped. § 87(2)(b) and § 87(2)(b) were both placed in handcuffs and brought out to the living room. The ESU officers then departed the location and approximately seven plainclothes officers then entered the apartment.

One officer took § 87(2)(b) into § 87(2)(b)'s room and closed the door (*this investigation identified this officer as Sgt. Joseph Gulotta*). Sgt. Gulotta told § 87(2)(b) "If you don't tell us where the drugs are, we are going to break your mother's apartment." At this time § 87(2)(b) stated that there were no drugs in the apartment. Sgt. Gulotta then allegedly grabbed a television off a nightstand and threw it to the floor; § 87(2)(b) stated that the television "broke" as a result of this action. Sgt. Gulotta then stated, "This is what is going to happen if you don't tell me." When § 87(2)(b) said nothing he was taken back to the living room; Sgt. Gulotta then brought § 87(2)(b) into the bedroom.

§ 87(2)(b) and the rest of the family were transported to the 72nd precinct's stationhouse where they remained for approximately seven hours. EMS transported § 87(2)(b) to the hospital due to a preexisting medical conditions that had become aggravated as a result of her confinement. After § 87(2)(b) was taken away, § 87(2)(b) stated that § 87(2)(b) began having a "seizure" on the floor of the holding cell. EMS was again called to the stationhouse to take § 87(2)(b) to the hospital. During this time § 87(2)(b) was transported to Brooklyn Central Booking; once at the location § 87(2)(b) asserted that he began "bleeding from his ears." The 72nd Precinct was telephoned and officers from the command returned to Central Booking and then transported § 87(2)(b) to § 87(2)(b). Upon returning from § 87(2)(b), § 87(2)(b) went before a judge. Upon returning to his mother's home, § 87(2)(b) asserts that excessive damage had been caused to the apartment. The television, VCR, and Playstation video game system were all broken. At the time of his interview, § 87(2)(b) provided multiple photographs showing damage to the house allegedly caused by the officers.

Results of Investigation

There were a total of five adults present inside of § 87(2)(b) when ESU officers first entered § 87(2)(b). § 87(2)(b), § 87(2)(b), § 87(2)(b), § 87(2)(b) and § 87(2)(b) were all interviewed by the CCRB. § 87(2)(b) did not provide the CCRB with an official statement based upon (his aunt) § 87(2)(b)'s determination that he would be unable to participate in an interview. Medical personnel at § 87(2)(b) determined § 87(2)(b) to be “mentally challenged” (*enc. 26c*). His criminal and civil attorney, § 87(2)(b), told this investigator that § 87(2)(b)'s mental capacity is similar to that of an eight-year-old. § 87(2)(b), § 87(2)(g)

Civilian witnesses

§ 87(2)(b) was interviewed on March 6th, 2002, in the presence of her criminal and civil attorney, § 87(2)(b). When three police officers entered her bedroom, § 87(2)(b) had her back to the door, as she turned to face the doorway, one officer stepped forward and struck her with an ESU shield (“large and plastic”). § 87(2)(b) stated that she fell forward and struck the right side of her forehead on the corner of her television stand. She was lying (stomach down) on the ground and stated that when she attempted to get up from the floor, an officer “kicked” her in the center of her back causing her to suffer bruising to her lower back (*see photographs, enc. 28g-k*). At this time § 87(2)(b) turned her head (as she lay on the floor) and observed § 87(2)(b) sitting on the living room couch. As § 87(2)(b) began to yell to his sister, an officer stepped forward and struck him in one of his eyes. After § 87(2)(b) was placed in handcuffs, two officers grabbed her, one by each of her arms, and pulled her up from the ground. § 87(2)(b) insisted that the forceful manner in which she was “pulled” up from the ground caused bruising on the inside of her left and right arms (*see photos, enc. 28g-k*). § 87(2)(b) was unable to specifically describe any of the ESU officers. Additionally, she could not recall interacting with any officers at the location who were not from ESU.

§ 87(2)(b) was escorted out of her bedroom and was brought to the stationhouse along with the rest of her family. § 87(2)(b) confirmed that her cousin § 87(2)(b) and her mother, § 87(2)(b) were both transported from the stationhouse to the hospital by EMS. § 87(2)(b) was transported to Central Booking and brought before a judge at approximately 12:00 PM on January 31st, 2002. Shortly after being released from custody, § 87(2)(b) stated that she suffered a “seizure” inside the courtroom and had to be transported to § 87(2)(b) by EMS. § 87(2)(b) indicated that her family has a history of seizures, but she had never previously suffered one. § 87(2)(b) asserted that the head trauma that she suffered from hitting her head against the corner of the television caused the seizure.

§ 87(2)(b) asserted that upon returning to her mother’s apartment, “everything (clothes, food, DVD’s, movies, stereo equipment) was on the floor.” Additionally, § 87(2)(b) stated that her television and VCR were broken. She asserted that no narcotics were recovered from the apartment. At this time during the interview, § 87(2)(b)'s lawyer stated that methadone had been recovered from the house. § 87(2)(b) has a prescription for this drug and one vial of crack was discovered at the apartment. § 87(2)(b) stated that drugs are not sold out of the location and that she was unaware as to where the vial of crack came from.

§ 87(2)(b) was interviewed on March 6th, 2002, also in the presence attorney § 87(2)(b). § 87(2)(b) confirmed that she was awake and present inside of her apartment when “five to six” ESU officers (“wearing helmets”) entered her bedroom. When § 87(2)(b) asked what was happening, the officers told her that she was running a “drug house.” The officers began searching § 87(2)(b)'s bedroom by looking under the bed, inside of drawers and in closets. While the search continued, § 87(2)(b) stated that she could hear § 87(2)(b) “screaming” and also overheard § 87(2)(b) state, “Why are you hitting my sister?” § 87(2)(b) stated that an officer struck § 87(2)(b) at this time, and while she was not able to observe this action, she later observed that § 87(2)(b) had a black eye.

§ 87(2)(b) stated that an officer escorted her to the living room where she was placed in handcuffs. At this time she observed that the officers had injured § 87(2)(b) when asked, § 87(2)(b) was unable to describe any of the injuries that she observed. § 87(2)(b) was then taken to the 72nd precinct's stationhouse where she began to vomit as a result of preexisting medical condition. EMS was called to the location and she was transported to the hospital.

§ 87(2)(b) does not live at § 87(2)(b) but was staying at the apartment on the date of incident. Due to his Philadelphia residence, § 87(2)(b) was interviewed on May 1st, 2002, nearly two months after members of the § 87(2)(b) and § 87(2)(b) family were initially interviewed by the CCRB. He testified that on January 30th, 2002, he was awoken when multiple officers "burst through" the front door of § 87(2)(b)'s apartment. Five officers entered § 87(2)(b)'s bedroom (where he was located) and ordered both § 87(2)(b) and § 87(2)(b) to "get on the ground"; they both complied. § 87(2)(b) testified that once on the ground, § 87(2)(b) stood up from the ground. An officer then stepped forward and "tripped" § 87(2)(b) back to the ground; while falling, § 87(2)(b) struck her head on the corner of the table that holds the television. § 87(2)(b) attempted to stand up multiple times and the officers "kept on hitting her on down." During this time, an officer was instructing her, "Get down. I told you to get down" and "kicked" § 87(2)(b) "two or three times" on her back.

§ 87(2)(b) observed § 87(2)(b) was lying on the living room floor and stated that as § 87(2)(b) was being "kicked" § 87(2)(b) attempted to get up from the ground while yelling, "Get off my sister!" § 87(2)(b) watched as an officer then approached § 87(2)(b) and "punched" him "just to the side of his eye." § 87(2)(b) was unable to recall which eye the officer struck and was additionally unable to describe the officer that punched § 87(2)(b) as the officer was wearing a "helmet and mask." § 87(2)(b) was also unable to observe if officers used force against § 87(2)(b). § 87(2)(b) was placed in handcuffs and escorted to the living room. No officers struck § 87(2)(b) at any time. A short time later, § 87(2)(b) and the rest of the family were escorted outside the apartment. § 87(2)(b) asserts that he has never seen narcotics sold from § 87(2)(b).

Photo array sessions

On May 1st, 2002, photo arrays were shown to § 87(2)(b), § 87(2)(b), § 87(2)(b) and § 87(2)(b) each were shown large photographs of the nine ESU officers that initially entered § 87(2)(b)'s apartment. § 87(2)(b) was able to identify that ESU's PO Glenn Ostermann was present at the location and that the officer at one time entered § 87(2)(b)'s bedroom; however, § 87(2)(b) was unable to observe if PO Ostermann used force against § 87(2)(b) while in her bedroom. § 87(2)(b) also recognized that she had interaction with PO Ostermann but could not recall the nature of this interaction. § 87(2)(b) was only to identify Sgt. Thomas Urban as having been present inside of her apartment; § 87(2)(b) did not see or recognize any of the officers that used force against § 87(2)(b), § 87(2)(b), or § 87(2)(b). § 87(2)(b) stated that he recognized PO Michael Murray of ESU and identified him as the officer that hit § 87(2)(b). § 87(2)(b) was unable to articulate how he was able to identify that it was PO Murray who hit § 87(2)(b) as he previously stated that this officer was wearing a helmet.

Medical records

The medical records for § 87(2)(b) who was taken to § 87(2)(b) on § 87(2)(b), indicate that § 87(2)(b) made no complaint of lower back pain; additionally the records do not indicate that § 87(2)(b) complained that he was "bleeding from the ears." Instead, the records are explicitly limited to the effects of § 87(2)(b)'s methadone withdrawal (*enc. 23f*). § 87(2)(b) received medical attention at § 87(2)(b) on § 87(2)(b); according to the ambulance call report, § 87(2)(b)'s chief complaint was that she "didn't know what [had] happened" (*enc. 24f*). Once at § 87(2)(b), § 87(2)(b) began complaining of what was noted as a "slight bump to her head" and "scattered bruises on upper [arms] and upper left leg" that she stated were sustained as a result of her interaction with police officers. The diagnosis given to § 87(2)(b) was that she had suffered a seizure, perhaps brought on by severe anxiety (*enc. 24k-m*). The medical records for § 87(2)(b) provide the CCRB with its only statement from § 87(2)(b) who, as previously noted, is mentally handicapped and was therefore not interviewed in regards to this investigation. Based upon the § 87(2)(b) report dated

§ 87(2)(b), § 87(2)(b)'s chief complaint was "pain to his groin." (*enc. 26c-k*). § 87(2)(b) also told medical personnel that he had been "beaten by cops" when his aunt's residence "got raided" on the morning of January 30th, 2002. § 87(2)(b) was treated for both anxiety and for a hernia that had caused swelling in his groin after having caused him discomfort since January 28th, 2002. The only additional injury noted that was bruising to his neck "consistent with handcuffing" (*enc. 26c*).

Criminal case

PO Giustino was the 72nd precinct team's arresting officer on January 30th, 2002, and was responsible for arresting § 87(2)(b), § 87(2)(b), § 87(2)(b), § 87(2)(b) and § 87(2)(b) § 87(2)(a) 160.50

Civil lawsuit

Based upon an October 1st, 2002, telephone discussion with § 87(2)(b) § 87(2)(b), members of the § 87(2)(b) and § 87(2)(b) families have filed a civil lawsuit against nineteen members of the NYPD. § 87(2)(b) § 87(2)(b) who is representing members of the § 87(2)(b) and § 87(2)(b) families, confirmed his ongoing participation with their civil lawsuit. Nineteen NYPD officers are included in the lawsuit; currently only PO Joseph Giustino is listed by name. § 87(2)(b) § 87(2)(b) stated that the suit is still in its initial discovery phase and that a trial date will not be until § 87(2)(b)

Officer interviews

A total of six officers were interviewed by the CCRB concerning their activity at § 87(2)(b)'s apartment; § 87(2)(g)

Sgt. Joseph Gulotta

Sgt. Gulotta works in the Anti-Crime unit of the 72nd Precinct. On January 30th, 2002, he was supervising the execution of a search warrant at § 87(2)(b). Multiple other officers from the 72nd Precinct (including Anti-Crime officers) were also at the location as well as the ESU A-Team (*consisting of a total of nine officers, enc. 27a*). § 87(2)(e), § 87(2)(f)

The ESU A-Team entered the apartment initially. Sgt. Gulotta and the other officers from the 72nd Precinct stood outside the apartment, in the hallway, until ESU had secured the location. This process took "a couple of minutes"; ESU then exited the residence.

At the time when Sgt. Gulotta first entered the location, he observed five individuals who were handcuffed and sitting on a couch in the living room. Sgt. Gulotta then conducted a brief interview of each prisoner in an attempt to discover the location inside the apartment where the narcotics were being secreted. Specifically, Sgt. Gulotta stated that he escorted each individual (separately) into one of the bedrooms. Sgt. Gulotta did "most of the talking" during these interviews despite their being a second officer present. All five individuals denied that there were narcotics present inside the apartment. Sgt. Gulotta did recall that § 87(2)(b) did indicate that the officers should be "looking for § 87(2)(b)"

Following the interviews, the prisoners were escorted from the apartment and brought to the 72nd precinct's stationhouse; Sgt. Gulotta and PO Giustino then conducted a search of the apartment. Lt. Daniel Murphy, head of Special Operations at the 72nd Precinct, was also present during the search. Although Lt. Murphy was the "overall supervisor at the location," he did not participate in the search. Sgt. Gulotta described as follows, "The search [was] a systematic search from room to room. Nothing [was] left unturned. There might be drugs...anyplace you can imagine. During the search we found lots and lots of money hidden all over the apartment—under mattresses...wrapped up in gloves. I also found a deck (glassine envelope) of heroin that matched the same deck of heroin that we purchased from the location (the heroin was located inside a shoe in § 87(2)(b)'s room)." Approximately \$6500 dollars was recovered from the pants pockets of § 87(2)(b) the remaining money was found wrapped in a rubber glove underneath a mattress. Sgt. Gulotta stated that the apartment was "very messy to start off with [and that]

any activity in. The team took five adults into custody; at no time did the team search for evidence. This was the extent of the officer's independent memory of the incident.

PO Ostermann could not recall whether any of the individuals at the location offered any resistance while being handcuffed. He stated that he did not hit or punch anyone while at the location. PO Ostermann also testified that he did not observe any of his partners hit or punch anyone while at the location. When handcuffing an individual, PO Ostermann stated that an officer might have to "push someone down" if the individual is not complying with an officer's requests; the officer could not recall whether he had to push anyone or if he observed his partners employing such a measure while at the § 87(2)(b) apartment.

PO Michael Murray

PO Murray confirmed that he was working with the A-Team on January 30th, 2002. PO Murray had no independent recollection of his activity or specific role while at § 87(2)(b)'s apartment. The only entry in his memo book concerning his interaction with individuals at the § 87(2)(b) apartment indicates that the team arrived at § 87(2)(b) at 6:35 AM.

When shown photographs of the § 87(2)(b) apartment, PO Murray stated that the residence did not look familiar. Likewise, the officer did not recognize photos of the individuals present at the apartment during the ESU entry. Specifically, PO Murray indicated that he did not recall placing his foot onto the lower back of § 87(2)(b) during the process of handcuffing § 87(2)(b). PO Murray also stated that he did not punch an individual while at the location. PO Murray testified, "we have the guns in our hands, so we couldn't – one guy's holding a shield and a gun, one guy's got a semi-automatic [weapon] that takes two hands to hold, so no, nobody really gets punched." The officer also stated that he did not observe any of his partners punch anyone while at the § 87(2)(b) apartment. PO Murray confirmed that he exercises the general tactic of "taking someone to the ground" if they refuse to comply with the order issued to do so. The officer stated that in order to handcuff a resistant individual, concentrated physical force might be applied to an individual's back. If an individual sustains injury during their interaction with ESU, PO Murray stated that EMS is notified; the officer clarified that EMS accompanies the A-Team when they execute warrants.

PO Joseph Giustino

On January 30th, 2002, PO Giustino was a member of the 72nd Precinct Anti-Crime team; he was acting as the arresting officer at a search warrant execution at § 87(2)(b)'s apartment. § 87(2)(e), § 87(2)(f)

After ESU secured the location (a process which took an estimated "three to five minutes"), PO Giustino stated that his team entered the apartment. At this time all of the prisoners were rear-cuffed and lying on the floor inside the residence. PO Giustino recalled that the apartment was in disarray at the time, describing specifically, "Clothes all over the place...pots, pans, garbage." PO Giustino did not recall § 87(2)(b) in any way. Once having viewed a photograph of § 87(2)(b), PO Giustino recalled that she "might have had" an injury, but was unable to recall the nature of this injury. When shown photographs of the injuries suffered by § 87(2)(b), PO Giustino recalled that § 87(2)(b) was later transported to the hospital. Upon further questioning, the officer recalled that § 87(2)(b) had a pre-existing hernia condition and that this was likely the reason he was taken to the hospital. PO Giustino stated that he did not have a conversation with § 87(2)(b) at any time regarding the location of narcotics inside the apartment. The prisoners were removed from the apartment approximately ten minutes after the officers from the 72nd Precinct entered the location.

PO Giustino conducted the search of the apartment. This search took "a couple of hours." Nothing was damaged during this search. A systematic search of every room in the apartment was conducted. § 87(2)(e), § 87(2)(f)

PO Giustino testified that none of the officers inside the apartment caused damage to a television. He did recall that there was at least one television inside the apartment and that a bag of crack was recovered from underneath the television when it was picked up from its stand. Additionally, a bag of heroin was recovered from inside a shoe and a bag of crack and "alleged PCP" were also found inside the apartment.

PO Giustino states that he has not been back to the apartment since January 30th, 2002, but that officers in his Anti-Crime team have information that narcotics continue to be sold from the location.

Lt. Daniel Murphy

On January 30th, 2002, Lt. Daniel Murphy was working with a team of 72nd precinct officers that included Sgt. Joseph Gulotta, who had obtained a search warrant for § 87(2)(b). After approximately five minutes spent waiting in the hallway of the building, ESU left the residence, whereupon the supervising ESU officer (*Sgt. Thomas Urban*) notified Lt. Murphy that the apartment was “cleared” and that all (five) individuals were secured. Lt. Murphy stated that one “elderly” individual § 87(2)(b) was taken to § 87(2)(b) as she was complaining of “chest pains.” The lieutenant also confirmed that none of the remaining four adults present were complaining of any injuries nor had they sustained any visible physical injuries.

Once the civilians were removed from the apartment, Lt. Murphy remained at the location until Sgt. Gulotta completed a search of the § 87(2)(b) apartment. He recalled that the residence was “messy” and stated that Sgt. Gulotta completed a thorough search of the location where drawers were opened, mattresses tipped over and closets searched – “anywhere where narcotics could be conceivably hidden.” The lieutenant clarified that he did not physically participate in the search. “Small amounts” of heroin and cocaine were found; the lieutenant was unable to estimate how long he and the team were inside of the location.

Conclusions and Recommendations

§ 87(2)(b)'s complaint contains a total of five allegations: § 87(2)(g)
§ 87(2)(b), § 87(2)(g)
§ 87(2)(b), § 87(2)(g)
§ 87(2)(b), § 87(2)(g)
§ 87(2)(b), § 87(2)(g)

Allegation a) Premises entered and searched.

Sgt. Joseph Gulotta obtained a valid search warrant for § 87(2)(b) on § 87(2)(e) prior to the date when officers from ESU's A-Team and the 72nd precinct appeared at the residence (*enc. 27d*). § 87(2)(b), § 87(2)(e), § 87(2)(f)

Due to the fact that § 87(2)(b)'s apartment is situated within the confines of the 72nd precinct, members of the 72nd precinct and their Anti-Crime unit were present at the apartment and conducted a search for narcotics. The assistance of members of the ESU A-Team was necessary in an effort to initially enter and secure the apartment.

§ 87(2)(g)
§ 87(2)(g)
§ 87(2)(g)

Allegation b) PO Michael Murray used physical force against § 87(2)(b).

§ 87(2)(b) alleged that he was “thrown to the ground” by officers and as a result injured his right knee on a metal bar. § 87(2)(b) also alleged that *while he was lying on the living room floor*, an officer punched him in the eye with enough force that he “almost blacked out.” When shown photographs

of the officers present at the apartment, § 87(2)(b) was unable to identify any of the officers who had used force against him; specifically, in the photographs he did not recognize the officer who had allegedly struck him in the face.

§ 87(2)(b) testified that she saw an officer punch her brother in the face, however in her statement she testified that § 87(2)(b) was “sitting on the couch” when the officer allegedly struck him. Like her brother, when shown photographs, § 87(2)(b) was unable to identify which officer was responsible for the alleged assault. § 87(2)(b) also stated that he witnessed an officer strike § 87(2)(b) “just to the side of his eye” (he could not recall where § 87(2)(b) was laying/seated during this exchange). In his initial CCRB testimony, § 87(2)(b) stated that this officer was “wearing a mask” and, as such, he was unable to provide a description. Later, during a photo array session, § 87(2)(b) testified that PO Michael Murray was the officer who struck § 87(2)(b). § 87(2)(b) was unable to state how he was able to determine that it was PO Murray who hit § 87(2)(b).

As established in the “results of investigation” portion of this report, none of the ESU officers present at the location had an independent recollection of being at § 87(2)(b)'s residence. It was only based upon paperwork that Sgt. Urban, PO Ostermann and PO Murray were able to indicate their activity while at § 87(2)(b). As such, none of the officers recalled having any interaction with § 87(2)(b).

The first record of § 87(2)(b) requesting medical attention is dated on § 87(2)(b). These records do not indicate that § 87(2)(b) was complaining of lower back pain or pain to his eye and instead the documents received from § 87(2)(b) indicate that his complaints were explicitly limited to the effects of his methadone withdrawal. None of the treating physicians noted physical injuries to § 87(2)(b).

§ 87(2)(b), § 87(2)(g)

Allegation c) Officers used physical force against § 87(2)(b)

Allegation d) Officers used physical force against § 87(2)(b)

§ 87(2)(b) stated that officers entered her bedroom and when she turned her back to them (while attempting to fully clothe herself), an officer “stepped forward” and struck her with an ESU shield. As a result, § 87(2)(b) fell forward and struck the right side of her forehead on the corner of her television stand, landing on her stomach. When she attempted to get up from the floor, an officer “kicked” her in the center of her back, causing her back to bruise (*photos, enc. 28g-k*). § 87(2)(b) testified very generally as to how he observed an officer “hit” § 87(2)(b) with a “shield” which, he stated, caused his sister to fall to the ground. § 87(2)(b) who was inside of § 87(2)(b)'s bedroom, offered contradictory testimony. § 87(2)(b) stated that § 87(2)(b) was on the ground after she complied with officer orders to “get down”; he stated that she then attempted to stand up, at which point an officer “tripped” her. § 87(2)(b) testified that § 87(2)(b) hit her head on a television stand when the officer tripped her. He also detailed that § 87(2)(b) “kept on” trying to stand up from the bedroom floor, prompting officers to “hit and kick” her.

None of the civilians interviewed were able to identify which officer allegedly used force against § 87(2)(b). As has previously been established, none of the ESU officers present at the location had any independent recollection of their activity at § 87(2)(b)'s apartment. Additionally, none of the six officers interviewed by the CCRB recalled any of the civilians present at § 87(2)(b) complaining of any injury as a result of their interaction with officers.

On the ambulance call report, dated § 87(2)(b), § 87(2)(b)'s chief complaint is recorded as, “I don’t know what happened.” She was later diagnosed with having had a seizure (*enc. 24a-n*). The “slight bump” and bruises noted on § 87(2)(b)'s body might have been sustained during her interaction with officers, or these injuries could have resulted in the seizure § 87(2)(b) suffered while at Central

Booking. § 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b) underwent surgery for a pre-existing hernia problem that flared up on § 87(2)(b), causing § 87(2)(b) discomfort beginning § 87(2)(b) prior to the date of incident (*enc. 26k*). While § 87(2)(b)'s medical records explicitly address the pain § 87(2)(b) was feeling in his groin as a result of the hernia, the records do not indicate whether § 87(2)(b) sustained any bruises or cuts as a result of his activity on § 87(2)(b). § 87(2)(b) told § 87(2)(b) personnel that he had been "beaten by the cops," but offered no additional details. § 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(b) and § 87(2)(b) each testified that they did not witness whether § 87(2)(b) had indeed been assaulted. § 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

Medical personnel at § 87(2)(b) did note, however, that § 87(2)(b) had sustained bruising to his neck, back and wrists. § 87(2)(b), § 87(2)(g)

Allegation e) Sgt. Gulotta caused damage to § 87(2)(b)'s property

§ 87(2)(b) supplied the CCRB with multiple photographs that he stated were taken immediately after he returned to his mother's apartment after being released from Central Booking (*see photographs, enc. 28a-d*). In the photographs, the apartment's state of disarray can be seen; § 87(2)(b) asserted that these photographs accurately depict the apartment's condition after officers from the 72nd precinct searched the residence. The photographs depict clothing strewn ovetop of mattresses and dressers without their drawers, but the photographs fail to feature any objects that appear destroyed or damaged. It was the assertion of § 87(2)(b) and § 87(2)(b) that a television and VCR at the apartment were "broken" as a result of the search conducted at the residence. § 87(2)(b), § 87(2)(g)

During a May 1st, 2002, visit to § 87(2)(b)'s apartment, a CCRB investigator was shown the television that had allegedly been "broken" on January 30th, 2002; the television was turned on and proved to be operational, save perhaps the need for a new antenna. § 87(2)(b) however, remained insistent that the television set had been damaged as a result of the officer's presence at the apartment. None of the six officers interviewed recalled doing any damage to § 87(2)(b)'s television; specifically, each of the officers stated that they did not throw the TV to the ground, nor did they observe any other officers participate in this destruction. § 87(2)(e), § 87(2)(f)

§ 87(2)(e), § 87(2)(f)

§ 87(2)(b), § 87(2)(g)

Investigator:

Date:

Supervisor:

Date:

Reviewed by:

Date:

Reviewed by:

Date: